

-----

)

)

Defendant. )

-----

## VOLUME II

-----

## And a Jury

-----

Case 3:10-cr-00009 Document 149 Filed 04/13/15 Page 1 of 87 PageID #: 1258

## A P P E A R A N C E S:

For the Plaintiff: Carrie Daughtrey  
Lynne Ingram  
Assistant U.S. Attorneys  
Nashville, TN

For the Defendant: Jennifer Thompson  
Attorney at Law  
Nashville, TN

## W I T N E S S E S:

SCOTT LEVASSEUR (Continued from 2/24/15)

Direct Examination by Ms. Daughtrey Page 5

Cross Examination by Ms. Thompson Page 34

(Voir Dire)

SCOTT LEVASSEUR

Examination by Ms. Thompson Page 56

## P R O C E E D I N G S :

THE COURT: Before we get started, I was informed by my law clerk that there was a request related to some exhibits. As reflected in my orders setting trials and other matters, I would request that counsel raise these matters in open court and not send the request through my staff.

MS. DAUGHTREY: I apologize for that, Your Honor.

THE COURT: Any preliminary matters before we get started?

MS. DAUGHTREY: Your Honor, I did discover this morning that there was an error in Exhibit 24. It's not with regard to the images that are there, but where the images were located. I have conferred with Ms. Thompson. I have corrected that. It's Exhibit 24 that has not been entered into evidence, so the jurors have not seen that yet. And I would ask permission from Your Honor to replace those exhibits in the jury books. I think it will take less than five minutes. We have a number of people here to help do that.

THE COURT: Do you expect to get to Exhibit 24 during the first session?

MS. DAUGHTREY: Yes, I do. Before the first break.

THE COURT: I'm going to ask the Marshal to go into the jury room, collect the exhibit books and bring them to the courtroom, and allow you all to make the substitution.

MS. DAUGHTREY: Thank you, Your Honor.

1 THE COURT: We'll be in recess.

2 (Recess.)

3 THE COURT: You may be seated. All right. Are you  
4 ready?

5 Bring the jury in, Mr. Marshal.

6 (Jury in.)

7 THE COURT: You may be seated. Good morning, ladies  
8 and gentlemen of the jury. We will continue now with the  
9 examination of this witness.

10 Counsel?

11 CONTINUED DIRECT EXAMINATION

12 BY MS. DAUGHTREY:

13 Q. Good morning, Detective Levasseur.

14 A. Good morning.

15 Q. Yesterday there was a mention of whether  
16 Limewire still exists. Can you tell us what you know about  
17 that?

18 A. Limewire company was shut down by the United  
19 States government a few years back. You can still get versions  
20 of Limewire from the Internet that were already in production,  
21 but Limewire itself has been shut down.

22 Q. Okay. Is that also true of Morpheus?

23 A. I don't know, ma'am. I haven't heard anything  
24 about that.

25 Q. Okay. I have put a couple of exhibits from

1 yesterday in front of you. Turning to Exhibit 18, can you tell  
2 us whether any of any of those file names include references to  
3 minors?

4 A. They do, ma'am, yes.

5 Q. Okay. And did you view those files to see if  
6 they might actually contain minors?

7 A. Yes, ma'am.

8 Q. What did you find?

9 MS. THOMPSON: Your Honor, I object at this point.

10 THE COURT: Ladies and gentlemen of the jury, I'm going  
11 to have to excuse you for a few minutes. I'm sorry, this is one  
12 of those pogo stick moments. Please don't discuss the case  
13 amongst yourselves until you receive all of the evidence, the  
14 argument of counsel, and the charge of the court. It should be  
15 a brief recess.

16 (Jury out.)

17 MS. THOMPSON: Your Honor, whether or not these people  
18 are minors is a question for the jury to decide. And so I  
19 object to Mr. Levasseur telling the jury whether or not these  
20 people are minors.

21 MS. DAUGHTREY: Your Honor, if I may, I believe his  
22 answer is going to be that they are adults or that they are  
23 difficult to tell. I don't know if Ms. Thompson will still  
24 object to that or not.

25 THE COURT: I don't know the basis for this statement.

1 I don't know, did he -- is it based their appearance? Is it  
2 based upon prior information that this person on the screen is a  
3 minor? I mean, how does he know it?

4 MS. DAUGHTREY: Right. And he won't be testifying that  
5 any of them are minors. He will be testifying that they appear  
6 to be adults. Or difficult to tell.

7 THE COURT: Whether they are a minor -- it seems to me  
8 that it's more helpful if we provide a more specific or  
9 quantitative basis upon which he makes the conclusion that they  
10 are minors. And I think that's more helpful and more probative  
11 to the jury than to just him say, I looked at this and they are  
12 minors. We have -- how does he make that determination?

13 MS. DAUGHTREY: Would it be objectionable to the  
14 defense if I asked if any of these files contained adults?

15 MS. THOMPSON: No, I don't -- I don't object to -- they  
16 are clearly adults.

17 THE COURT: Well, that --

18 Sir, when you looked at these images, how did you come  
19 to any conclusion about the age of the persons on the images  
20 that you saw? How did you come to any conclusion about that?

21 THE WITNESS: Just from my personal experience and  
22 knowledge with viewing these files all the time and --

23 THE COURT: I mean, did you make a determination based  
24 upon their bodily appearance or what?

25 THE WITNESS: Based on their -- what they appear to be.

1 Some of the files she is asking about in Exhibit 18 -- they are  
2 obviously grown adults. Some of the files are what we call age  
3 difficult. They could be 18 year olds or they could be 16 year  
4 olds. That's what we call difficult, and we don't include that  
5 as child pornography.

6 THE COURT: Well, why is this document in evidence?

7 MS. DAUGHTREY: Your Honor, the document is in evidence  
8 because these are file names that --

9 THE COURT: Why is it relevant?

10 MS. DAUGHTREY: It's relevant because the file names  
11 have information about child pornography in them. The file  
12 names look like that. What he's going to testify to is that he  
13 often -- that people do download files, thinking they are child  
14 pornography, and that they end up being adult pornography.

15 MS. THOMPSON: Your Honor, I take back what I said a  
16 minute ago about it's fine if he testifies some were adults. I  
17 feel uncomfortable him testifying as to any age, because that  
18 might leave the jury with the impression that he knows for sure  
19 who is an adult, and then the other ones he has expertly looked  
20 at and they were children. And I object to that.

21 MS. DAUGHTREY: Okay. I will withdraw the question.

22 THE COURT: You can bring the jury back in.

23 (Jury in.)

24 THE COURT: Once again, ladies and gentlemen of the  
25 jury, please -- I apologize. Please take any frustrations out



1 on me.

2 Counsel?

3 MS. DAUGHTREY: Thank you.

4 BY MS. DAUGHTREY:

5 Q. Detective Levasseur, yesterday you mentioned  
6 that there was a user profile, an old user profile, on the prior  
7 installation of windows on that laptop computer.

8 A. Yes, ma'am.

9 Q. Can you explain what that means?

10 A. Well, the last time before the new installation  
11 of windows occurred, the computer was in use, and it had folders  
12 and files and had profiles. And the profile name that I was  
13 able to recover from unallocated space showed that the user  
14 profile name was Seth. In the new installation of windows, it's  
15 the default name that windows gives if you don't actually type  
16 in a user profile. It just defaults to owner.

17 Q. Did you find any files that were associated with  
18 that profile of seth that had been on the computer?

19 A. I did.

20 Q. Okay. Your Honor, if I may approach the witness  
21 and hand him Exhibit 21.

22 Do you recognize this?

23 A. I do.

24 Q. What is it?

25 A. It's list of file fragment names, names of files

1       that I found on the laptop computer from a different  
2       installation of windows. One where the user profile name was  
3       Seth. And I was able to recover a file path and a file name  
4       which was -- the file path was Documents and Settings, Seth,  
5       Desktop, New Folder. So that means that there was a folder  
6       called New Folder on the desktop.  
7       And within that folder there was a file named  
8       Girl\_12\_Year\_Old\_Fuck\_With\_Boy\_13\_Year\_Old\_In\_Birthday\_Party.avi  
9       which would indicate it's a movie file.

10             The next file that I was able to recover from that  
11       folder -- the file name I was able to recover from that folder  
12       was Teacher\_Seducing\_Student.divx, which is another multi-media  
13       file, a video file. And then the third one was  
14       Russian\_Preteens.avi, which is a movie file.

15             MS. DAUGHTREY: Your Honor, at this time I would ask  
16       that Exhibit 21 be entered into evidence.

17             THE COURT: It will be admitted.

18       BY MS. DAUGHTREY:

19             Q.       Were these pieces or file names -- were they  
20       found all in the same place on the laptop computer? Or did they  
21       come from different places?

22             A.       They came from unallocated space. And as far as  
23       the physical location, I don't remember documenting that.

24             Q.       Okay. Was this laptop computer used for things  
25       other than pornography?

1           A.       Yes, ma'am.

2           Q.       And did you find any files related to any other  
3 person other than Mr. Tummins on this computer?

4           A.       Yes, ma'am.

5           Q.       Can you tell us about that?

6           A.       Yesterday I said that after windows was  
7 installed that a whole mass of files were copied back over onto  
8 the computer. In the mass copying of all those files back onto  
9 the computer, there -- there was a folder called -- the folder  
10 was called Bryson. And within that folder were a couple -- more  
11 than 2,000 files and folders that appeared to belong to a man  
12 called Bryson. And from the documents it was all school-related  
13 documents to do with -- a lot of school-related documents to do  
14 with middle school. It appears as though he was a teacher.

15                 And copied in that folder was also a -- was also a  
16 database file for email that would have come from a computer,  
17 but I'm not sure which computer, because it was copied over to  
18 this computer. And it had emails from this Bryson man, dating  
19 -- the last email in that email database file was in 2005. So  
20 that -- a lot of those files and stuff in that folder date back  
21 to 2005.

22           Q.       And that's approximately how many years before  
23 you seized the computer?

24           A.       I seized the computer in 2009. So about four  
25 years.

1 Q. And were you able to tell whether or not there  
2 was an individual named Bryson who used that computer?

3 A. I searched for anything I could to try to find,  
4 you know, any other documents on the computer as showing this  
5 Mr. Bryson as using this computer, and I found none.

6 Q. Did Mr. Tummins ever tell you that somebody else  
7 had used that computer?

8 A. No, ma'am.

9 Q. Okay. Did you find other documents that were  
10 related to the defendant on that computer?

11 A. I did.

12 Q. If I may hand you Exhibits 22 and 23. Do you  
13 recognize those documents?

14 A. I do.

15 Q. And can you tell us what Exhibit 22 consists of?

16 A. Exhibit 22 is a document that I found on the  
17 computer, and it has to do with students' grades. And it's  
18 digitally signed J. S. Tummins. And he's informing parents of  
19 students' grades.

20 Q. Okay. And are the other documents similar  
21 documents to that?

22 A. The second document is -- has -- it's titled at  
23 the beginning as Seth Tummins Education 5360 Final Exam, Dr.  
24 McCanahan. And then there is writing about the teaching. And  
25 the next image is -- it's titled Eight Images. And it's

1 digitally signed on the bottom J. S. Tummins. And it talks  
2 about:

3 The premise of my work is to serve as an introduction  
4 to one another, to our lands. It appears to be some kind of  
5 school, college document.

6 Q. And were these -- is this information that you  
7 found on the laptop computer?

8 A. Correct.

9 Q. Okay. And Exhibit 23 -- just generally, what is  
10 in that exhibit? Do you recognize it? And what is in it?

11 A. Those are fragments of Hotmail being accessed  
12 with the user name of Seth. And another fragment of email with  
13 SethTummins@Hotmail.com showing as email on the bottom.

14 MS. DAUGHTREY: Your Honor, at this time I would like  
15 to ask to enter Exhibits 22 and 23 into evidence and allow the  
16 jurors turn to those tabs.

17 BY MS. DAUGHTREY:

18 Q. Going back to Exhibit 23 -- I mean 22, I'm sorry  
19 -- do you recall where you found those --

20 THE COURT: Excuse me for a moment. First of all,  
21 Exhibits 22 and 23 are admitted. I think it would be more  
22 appropriate to have them admitted before you get into the  
23 substance.

24 MS. DAUGHTREY: I apologize to Your Honor.

25 BY MS. DAUGHTREY:

1           Q.       Detective Levasseur, can you tell us where those  
2 documents were found on the computer, those three pieces out of  
3 Exhibit 22?

4           A.       Exhibit 22, they were in the Owner Profile  
5 folder. And I believe in the My Documents folder. I'm not a  
6 hundred percent sure, but I believe in the My Documents folder.

7           Q.       Okay. And Exhibit 23 -- where on the computer,  
8 on the laptop, did you find these?

9           A.       I pulled these out of either unallocated space  
10 or page file.sys.

11          Q.       Okay.

12          A.       Well, it's going to be unallocated space,  
13 because the page file would not have existed for this user  
14 profile on the current computer. So it would be unallocated  
15 space.

16          Q.       The bottom of Exhibit 23, the third item there  
17 -- what is the nature of that?

18          A.       It appears to be a communication. It starts  
19 out: Laura McMullin and Andrea Tummins. This inside panel is a  
20 good place to provide additional information. If it's a musical  
21 CD, you may want to list credits or give special thanks. You  
22 may also want to provide the date and location of the recording  
23 or copyright information. If your CD contains software, you may  
24 want to provide installation instructions, system requirements,  
25 or product information. Produced in late December 2007 for

1 friends and family, Greetings from Tennessee, phone number --  
2 and the phone number is listed -- and then email  
3 SethTummins@Hotmail.com.

4 Q. Do you know who Laura McMullin is?

5 A. Do I know what, ma'am?

6 Q. Do you know who Laura McMullin is?

7 A. I believe that that's his wife's maiden name.

8 Q. Did you find any other items or any evidence of  
9 Laura McMullin Tummins on this laptop computer?

10 A. I don't recall so, ma'am.

11 Q. Did you find any evidence that she had used the  
12 computer?

13 A. I did not, ma'am.

14 Q. You mentioned yesterday that you thought that  
15 the reinstallation may have happened because why?

16 A. The computer got a virus and it stopped working  
17 or partially working.

18 Q. Okay. And is it possible that that virus could  
19 be responsible for the files on the computer?

20 A. I didn't find any evidence of that, ma'am.

21 Q. Okay. In your experience investigating child  
22 exploitation cases and doing computer forensic exams, have you  
23 ever run across a virus that can download child pornography to a  
24 computer?

25 A. No, ma'am.

1           Q.       We've talked a lot about the file names and  
2 other information that was found on each of these computers.  
3 And I would like to turn your attention now to the content of  
4 some of those files. In examining these computers, were you  
5 able to recover any files that involved sexual activity that  
6 might include children under the age of 18?

7           A.       I was.

8           Q.       Okay. Were you able to recover any video files?

9           A.       I was.

10          Q.       And where were those video files located?

11          A.       In the recycle bin.

12          Q.       On which computer?

13          A.       In the tower, the Gateway tower.

14          Q.       Okay. And did you find any other images on the  
15 computer?

16          A.       On the Gateway computer?

17          Q.       On either computer.

18          A.       I found a lot of images and videos on the  
19 computers, yes.

20          Q.       Okay. If I may approach and hand you what has  
21 been previously marked as Exhibit 24. Without going into any  
22 detail about this exhibit, could you just look at it and see if  
23 you recognize the exhibit.

24          MS. THOMPSON: Your Honor, may I approach?

25          THE COURT: Yes.



1           (Whereupon, a bench conference was held, out of the  
2           hearing of the jury, to wit:)

3           MS. THOMPSON: Several of the jurors have already  
4           turned the page and are already looking at these exhibits before  
5           they have been introduced. And I would also, while we're up  
6           here, like to renew my objection to still photographs of videos  
7           being introduced instead of the video.

8           THE COURT: For the reasons stated earlier, the  
9           objections are overruled. The jurors having notebooks with all  
10          of the exhibits is something that was agreed to earlier. They  
11          asked if they could do that ahead of the schedule and look at  
12          exhibits before they were entered into evidence. That was  
13          agreed to earlier.

14          (Conclusion of bench conference.)

15          BY MS. DAUGHTREY:

16                 Q.       Sorry if I have already asked this question. Do  
17                 you recognize -- ?

18                 A.       I do.

19                 Q.       And where did those -- what does that exhibit  
20                 contain?

21                 A.       It contains -- the first two pages contain  
22                 images that were thumbnails that I recovered off of the laptop.  
23                 And the other pages are screen captures that I created of the  
24                 video files that I recovered off of the desktop.

25                 Q.       Okay.

1 MS. DAUGHTREY: Your Honor, at this time I would ask  
2 that Exhibit 24 be entered into evidence and that the jurors be  
3 allowed to turn to that tab.

4 THE COURT: It will be admitted. And ladies and  
5 gentlemen of the jury, I'm going to ask you, please avoid, if  
6 you can, getting ahead in the exhibit book. Let's just wait  
7 until it's actually admitted. I know there is a temptation to  
8 just get ahead of schedule and see what's coming up, but if you  
9 could, try and avoid that.

10 BY MS. DAUGHTREY:

11 Q. Looking on the first page, at the very top there  
12 is a file name. Can you tell us what that file name is?

13 A. It's a file name. It's preceded by thumbs DB,  
14 which is what the system -- that thumbs brackets 146215.db is  
15 issued by windows software. But the actual file name of the  
16 image was with -- well, the image was a video file. It was  
17 My\_Nine\_Year\_Old\_Cousin\_Sucking\_My\_Cock.mpeg. And then you have  
18 brackets with numbers.jpeg. That's a windows function. Windows  
19 is making a jpeg, an image, of the video file frame. So it's  
20 got two extensions.

21 Q. Okay. So the original file name that was  
22 originally on the computer before windows and Thumbs.db added on  
23 things to it -- what was that the original file name? what did  
24 it begin with?

25 A. My.

1 Q. And what did it end with?

2 A. Mpg.

3 Q. Okay. So it's that portion in the middle?

4 A. Correct.

5 Q. Okay. And you testified earlier that you found  
6 this on the Compaq laptop computer?

7 A. Correct.

8 Q. Where was it on that computer?

9 A. It was in the thumbs database file that was  
10 within the Limewire Save folder.

11 Q. And did you find -- you indicated before that it  
12 was --

13 A. Let me correct that. I'm thinking of another  
14 image in that location that I gave. Give me just a second. I'm  
15 going to have to say that I don't recall which folder I got that  
16 out of.

17 Q. Okay. Did you -- in the course of your  
18 examination, did you prepare a report in this case?

19 A. I did.

20 Q. All right. And do you have that report with  
21 you?

22 A. Let me check my report, ma'am. That thumbnail  
23 would have come from Documents and Settings/Owner/My  
24 Documents/Morpheus Shared/Downloads. So it would have been in  
25 the downloads folder that was inside of the Morpheus shared

1 folder, which was in the My Documents folder.

2 Q. Okay. How would this thumbnail have gotten to  
3 that folder?

4 A. Morpheus downloads the files to the file that  
5 it's directed to. And apparently this one was the Morpheus  
6 shared/Downloads folder. And once the video file is downloaded  
7 to that folder and then viewed, a thumbnail is created by  
8 windows to show the representation of the file to the user. So  
9 windows makes the thumbnail file from the video file. And it  
10 resides there. And it's like I described yesterday. It's in  
11 the database file. And even though the file is deleted, that  
12 image of the video still stays there.

13 Q. Do you recognize this image?

14 A. I do.

15 Q. And does it belong to a specific series that you  
16 know of through your investigation and work?

17 A. It does.

18 Q. What is the name of that series?

19 A. The Vicky series.

20 Q. Turning to Page 2.

21 THE COURT: Of what exhibit, please?

22 MS. DAUGHTREY: Of Exhibit 24.

23 BY MS. DAUGHTREY:

24 Q. Can you tell us what the file name is in this  
25 case?

1           A.       It's a -- the original file name I do not have.  
2       I just -- you just have Thumb Cache-961416.db. And that's going  
3       to be -- the location of that file is going to be a mistake on  
4       my part. The file name I told you that it was located on the  
5       laptop. That file name is indicative of windows Vista because  
6       of the underscore 96 in the file name that I didn't look at  
7       earlier. And that file name is going to be indicative of Vista.  
8       So I was incorrect when I said that file was located on the  
9       laptop. And I told that you earlier wrongly.

10          Q.       Okay. Do you have a pen with you?

11          A.       No, ma'am.

12          Q.       If I may approach. Could you cross out the  
13       location on that and put your initials by it.

14               THE COURT: If would you date it. Date the change.  
15       (Witness complies.)

16          THE WITNESS: I'm vapor locked. What's the date?

17       BY MS. DAUGHTREY:

18          Q.       I believe it's February the 25th. Can you tell  
19       us why it is that this file name does not have the original file  
20       name in it?

21          A.       Windows XP and Windows Vista and Windows 7 --  
22       they act differently, and they handle these files differently.  
23       In Windows XP, the thumbnail database file resides in the folder  
24       where the files were. So it's very easy to correlate as to  
25       where those files actually were, even though they were deleted.

1 In windows vista and windows 7, the thumbnails database file is  
2 in a windows folder and not in the folder of where the file was.  
3 And it stopped giving us location of the actual file name and  
4 just gave us what you are looking at on the paper, more or less.

5 Q. Turn to Page 3 of Exhibit 24. Can you explain  
6 what this series of images is?

7 A. These are screen captures that I took from a  
8 video file that was in the recycle bin. When I recovered it,  
9 the original file name to that file was  
10 Family\_Sex-13YO\_Brother\_Fucks\_11YO\_Sister\_and\_Sperm\_Inside.mpeg.

11 Q. So were you able to recover the whole video?

12 A. I was.

13 Q. And how long was that video?

14 A. Ma'am, this exhibit that I have is incorrect.  
15 The location on my exhibit is saying that it came from the  
16 laptop. And I know that we -- it was on a desktop. I don't  
17 know if all of the exhibits are like that.

18 Q. Okay. If you could again take your pen and  
19 cross out the incorrect portion and initial and date it.

20 A. (Witness complies.)

21 Q. All right. So which computer was this?

22 A. This came off of the tower. This is the same  
23 video file that I downloaded on my undercover operation.

24 Q. Okay. And is this one of the ones that you  
25 downloaded -- on what date?

1 A. The 21st of April, I believe it was.

2 Q. Okay. And how long is this video?

3 A. This video is approximately five minutes and 55  
4 seconds long.

5 Q. And where -- what is this initial frame? What  
6 does that mean?

7 A. The initial frame, the screen capture -- well,  
8 that would be the thumbnail of the video file. It's the initial  
9 frame of the video. And it's depicting somebody appears to be  
10 laying down in panties.

11 Q. Where did the other additional frames come from?

12 A. I -- I played the video, and paused it and took  
13 screen captures of the screen to make these exhibits.

14 Q. And these exhibits -- are they all in the first  
15 few frames of the file, over the whole file? Or what parts of  
16 the file or the video file did they come out of?

17 A. On the first few frames you see, of course, I  
18 started with the first frame. And then they were the beginning  
19 of the video file, the next couple. And it's a progression  
20 through the movie file. The next two. And then the final two  
21 are the ending of the video file.

22 Q. Okay. And the final two -- what page are those  
23 on in this exhibit?

24 A. Page 4.

25 Q. Okay. And can you explain what that last screen

1 shot is from the video?

2 A. It appears to be a --

3 MS. THOMPSON: Your Honor, I object to him describing  
4 the picture. The picture --

5 THE COURT: Would counsel approach the bench?

6 (Whereupon, a bench conference was held, out of the  
7 hearing of the jury, to wit:)

8 THE COURT: Yes, ma'am.

9 MS. THOMPSON: I object to him describing the picture  
10 and what it appears to be. The picture is in front of the jury.  
11 They can make their own decision regarding the content.

12 THE COURT: What is this testimony going to be?

13 MS. DAUGHTREY: That it's a picture of a girl on a bed.

14 MS. THOMPSON: Well, even just saying the word, girl.  
15 It could be a woman on a bed. I object to him describing the  
16 picture.

17 THE COURT: Is he going to provide any basis for which  
18 he says it's a girl as opposed to a woman?

19 MS. DAUGHTREY: Your Honor, I will withdraw the  
20 question.

21 (Conclusion of bench conference.)

22 BY MS. DAUGHTREY:

23 Q. Turning to Pages 4 and 5 of Exhibit 24, on what  
24 computer did you find this?

25 A. I found them on the tower, the Gateway tower.



1 Do you want me to make the correction?

2 Q. Yes, if you could, please. And initial and date  
3 it.

4 A. (Witness complies.)

5 Q. And where on the Gateway computer did you find  
6 the file?

7 A. The recycle bin.

8 Q. And this file end that's at the very top -- what  
9 is that?

10 A. The file end at the very top is a file name  
11 given by windows Operating System to the file when it's  
12 introduced into the recycle bin.

13 Q. Okay. And the original file name -- where does  
14 that come from?

15 A. The original file name comes from the data  
16 within the recycle bin.

17 Q. And how long is this particular video?

18 A. This video is approximately 32 minutes and 16  
19 seconds.

20 Q. Okay. And is this -- how did you go about  
21 creating these images?

22 A. I played the -- again, the initial frame of the  
23 movie file, which would also be the thumbnail, is the first one.  
24 And then I played the video in a Media Player, paused it, took a  
25 screen capture, and moved it off to Word Document. Off -- yeah,

1 off the word Document.

2 Q. So all of these images that are on these two  
3 pages come from that video?

4 A. Correct.

5 Q. And is that true of the previous set as well?

6 A. Correct.

7 Q. Is this one of the ones that you downloaded?

8 A. This is.

9 Q. And turning to the final two pages. And tell us  
10 what computer you found this on.

11 A. This was also located on the Gateway tower. Do  
12 you want me to make the change?

13 Q. Yes, please. And how long is this video?

14 A. This video is approximately 16 minutes and four  
15 seconds long.

16 Q. And I'm sorry if I already asked you. Where on  
17 the Gateway computer was this found?

18 A. In the recycle bin.

19 Q. Did you create these images in the same way you  
20 did on the previous four pages?

21 A. I did.

22 Q. Okay. If I may approach and hand you  
23 Government's Exhibit 25. Do you recognize that CD?

24 A. Yes, ma'am.

25 Q. Have you viewed the content of that CD?

1 A. Yes, ma'am.

2 Q. How do you know?

3 A. I did it this morning, and I initialed the disk.

4 Q. And what is on that disk?

5 A. It contains video files that are in the -- from  
6 what I took screen captures from.

7 Q. So this Exhibit 24 -- the video files are on  
8 that disk?

9 A. Correct.

10 MS. DAUGHTREY: Your Honor, at this time I would ask  
11 that that be entered into evidence.

12 THE COURT: Exhibit 25 will be admitted.

13 BY MS. DAUGHTREY:

14 Q. Is it possible that these files were  
15 accidentally downloaded to this computer? Or these computers?

16 A. No, ma'am.

17 Q. Based on what you found on these computers, do  
18 you have an opinion on whether or not a user of the computer was  
19 trying to view child pornography?

20 A. Yes, ma'am.

21 Q. What is your opinion about that?

22 A. It's my opinion --

23 MS. THOMPSON: Your Honor, I object.

24 THE COURT: Ladies and gentlemen of the jury, we are  
25 going to have to excuse you for a few minutes. Please don't

1 discuss the evidence until you receive all of the evidence, the  
2 argument of counsel, and the charge of the court.

3 (Jury out.)

4 THE COURT: You may be seated.

5 MS. THOMPSON: Yes, Your Honor. I object. She is  
6 asking him in his opinion does he believe -- she is asking him  
7 to go to the intent of Mr. Tummins when he downloaded this  
8 pornography, if he did. And Your Honor, I would state that the  
9 ultimate question of intent is specifically listed in the  
10 evidence rules. She may not ask him to comment on Mr. Tummins'  
11 intent. Just because she substitutes the name of the user  
12 instead of Mr. Tummins, she is asking him to comment on the  
13 specific intent of downloading these files. That's an ultimate  
14 question for the jury to decide. I object to him answering this  
15 question.

16 MS. DAUGHTREY: Your Honor, the question was whether or  
17 not the user of the computer, not Mr. Tummins.

18 THE COURT: Yeah, but all of your other questions --  
19 all of the other evidence you have elicited from this witness is  
20 that it had to be Mr. Tummins. And that Tummins was the only  
21 one using these computers. That's all of the evidence you have  
22 been eliciting. You have been excluding everybody else. If  
23 anybody else's name shows up, you say, any evidence that they  
24 used this computer? So I don't think that is a legitimate  
25 distinction.

1 MS. DAUGHTREY: Okay.

2 THE COURT: Anything else?

3 MS. DAUGHTREY: No.

4 THE COURT: Further response to the objection?

5 MS. DAUGHTREY: No, Your Honor.

6 THE COURT: No, her response to your objection.

7 MS. DAUGHTREY: I'm sorry. I withdraw the question.  
8 I'm sorry.

9 THE COURT: Okay. The question is withdrawn.

10 MS. THOMPSON: Your Honor, since the question has  
11 already been asked, could the Court please instruct the jury to  
12 disregard the question?

13 THE COURT: I will instruct them that the question has  
14 been withdrawn.

15 (Jury in.)

16 THE COURT: Once again, I apologize, ladies and  
17 gentlemen of the jury. The question asked of the witness was  
18 withdrawn.

19 You may ask your next question.

20 BY MS. DAUGHTREY:

21 Q. Detective Levasseur, I asked you questions  
22 yesterday about talking with the defendant on May 18 of 2009.  
23 who is it that you interviewed?

24 A. I interviewed Mr. Jeremy Seth Tummins, sitting  
25 over there.

1 Q. And what is he wearing in the courtroom today?

2 A. He is wearing a blue shirt and a gray jacket.

3 MS. DAUGHTREY: Your Honor, may the record reflect that  
4 he has identified the defendant.

5 THE COURT: The record will so reflect.

6 BY MS. DAUGHTREY:

7 Q. And where is it that this interview took place?

8 A. At Mr. Tummins' residence.

9 Q. Is that located in the Middle District of  
10 Tennessee?

11 A. It is.

12 Q. Did you record that interview?

13 A. I did.

14 Q. why?

15 A. I record all my contacts with suspects and when  
16 I do search warrants. That's just what I do.

17 Q. Is that something that other law enforcement  
18 officers in your agency typically do?

19 A. Yes, ma'am.

20 Q. okay. Did you tell him you were recording the  
21 interview?

22 A. No, ma'am.

23 Q. why not?

24 A. I didn't have any reason to.

25 Q. Is that something that other law enforcement

1 officers in your agency do?

2 A. Yes, ma'am.

3 Q. How long is that recording?

4 A. I think it's over two hours.

5 Q. Okay. Did you listen to that interview in  
6 preparation for this trial?

7 A. I did.

8 Q. When did you listen to it?

9 A. On Monday.

10 Q. Okay. Were you tough on Mr. Tummins when you  
11 were interviewing him?

12 A. I was.

13 Q. Why?

14 A. I felt he wasn't being honest to me. He wasn't  
15 -- after he initially confessed that he was the one that  
16 downloaded the child pornography, my questions --

17 MS. THOMPSON: Your Honor, I have an objection.

18 THE COURT: Would counsel approach the bench.

19 (Whereupon, a bench conference was held, out of the  
20 hearing of the jury, to wit:)

21 MS. THOMPSON: I object to whether -- he's giving an  
22 opinion as to whether or not my client was honest in what he  
23 stated. The jury can listen to interview, and the government  
24 can put the interview on. But I object to him giving an opinion  
25 about whether or not my client was honest. And I object to him

1 calling it a confession at this point. A confession has certain  
2 specific legal requirements and he has not been set up to  
3 testify to that. So I object to that.

4 MS. DAUGHTREY: Your Honor, he is just testifying to  
5 what he believed and why he was being hard on him. Certainly  
6 the other things are subject to cross examination if the defense  
7 wants to do that. I don't feel it's necessary to play a two  
8 hour tape for the jury. I think his answering questions about  
9 that -- if Ms. Thompson wants to back and play that tape, that's  
10 fine. But I'm not going to ask the jury to sit through two  
11 hours of it. I think a summary of it is fine.

12 THE COURT: The question wasn't designed to elicit a  
13 summary. It was designed to give an opinion on something that I  
14 don't know that there is a predicate for. I mean, he is  
15 characterizing something nobody has heard.

16 (Conclusion of bench conference.)

17 THE COURT: Ladies and gentlemen of the jury, we're  
18 going to take our morning recess. Please don't discuss the case  
19 amongst yourselves until you receive all of the evidence, the  
20 argument of counsel, and the charge of the Court. It will be  
21 about a 15 minute recess.

22 (Jury out.)

23 THE COURT: We'll be in recess.

24 (Recess.)

25 THE COURT: You be may be seated. The objection to the



1 testimony eliciting the opinion of the officer on whether the  
2 defendant was truthful in the interview, the Court notes a  
3 series of cases citing United States v. Wright, 464 Fed. App.  
4 475, beginning at Pages 479 and continuing over to 480. Of  
5 particular note, the Sixth Circuit cited one of its earlier  
6 opinions in United States v. Warshak, 631 F.3d 266, that  
7 testimony that the defendants took actions with certain intent  
8 violated Rule 704(b) but noted in that case the error was  
9 harmless.

10 And then in United States v. Garcia, -- I'm sorry,  
11 United States v. Grenard, which is another case cited  
12 approvingly, an agent's interpretation of phone calls, including  
13 some the jury had not heard, usurped the jury's function.  
14 They noted also that the general rule was that determining the  
15 weight to be given evidence is ordinarily a question before the  
16 jury. So I'm going to sustain the objection to the question.

17 Bring the jury back in.

18 (Jury in.)

19 THE COURT: All right, ladies and gentlemen. The Court  
20 is going to instruct you that the objection to the last question  
21 was sustained, and you are to ignore the question.

22 BY MS. DAUGHTREY:

23 Q. Detective Levasseur, you indicated in earlier  
24 testimony that you listened to the recording in preparation for  
25 testimony; is that correct?

1           A.       I did.

2           Q.       And is your testimony today and yesterday  
3 consistent with that recording to the best of your recollection?

4           A.       It is.

5           MS. DAUGHTREY: That's all the questions I have. Thank  
6 you.

7           THE COURT: You may cross examine.

8           Ladies and gentlemen, the Court is going to instruct  
9 you to disregard the last question and the last answer. You may  
10 cross examine.

11 CROSS EXAMINATION

12 BY MS. THOMPSON:

13           Q.       Good morning, Detective Levasseur.

14           A.       I can't hear you, ma'am.

15           Q.       Okay. Good morning, Detective Levasseur. How  
16 are you?

17           A.       Good. Good morning.

18           Q.       I want to start off with asking you some  
19 questions about the restrictions on child pornography. Under  
20 the law, --

21           MS. DAUGHTREY: Your Honor, --

22           THE COURT: Sustained.

23 BY MS. THOMPSON:

24           Q.       Under the law, I am not --

25           THE COURT: This man is not qualified as a lawyer. if

1       you want to ask him questions about his experience, you may do  
2       so.

3               MS. THOMPSON:   Okay.

4       BY MS. THOMPSON:

5               Q.       In your experience, is a defense attorney  
6       allowed to have a copy of these images in question that might be  
7       child pornography?

8               MS. DAUGHTREY:   Objection, Your Honor.

9               THE COURT:   Sustained.

10       Ladies and gentlemen of the jury, I'm going to have to  
11       excuse you again. Please don't discuss the evidence amongst  
12       yourselves until you receive all of the evidence, the argument  
13       of counsel, and the charge of the Court.

14       (Jury out.)

15       THE COURT:   Just for clarity of the record, I struck  
16       the last question and answer because the witness was testifying  
17       on a matter about his own credibility on substance that is not  
18       before the jury, and the jury has no basis upon which to  
19       challenge the defendant's characterization of his prior  
20       statements.

21       You are asking him about discovery matters, what you  
22       are entitled to. I don't think that is a proper question to  
23       this witness. So what is the purpose of this line of  
24       examination?

25       MS. THOMPSON:   I want to elicit from this witness the

1 fact that I cannot go in and do Google searches or image  
2 searches on these different words, because if I were to happen  
3 to come across child pornography, then I would be in possession  
4 of unauthorized or illegal content.

5 THE COURT: I don't think that's even relevant. What  
6 is the relevance of that? I don't understand the relevance of  
7 that.

8 MS. THOMPSON: Well, one of the things he testified to  
9 is that he has special training and knowledge as to what these  
10 different words mean, what these different search terms mean,  
11 such as the Vicky series. I want to question him about the  
12 Vicky series and the fact that I, or my investigators, other  
13 people that are not in law enforcement, are not allowed to view  
14 this Vicky series or search it, Google search it, and see what  
15 even comes up. That we have to depend solely on his opinion.

16 THE COURT: Are you saying that the defendant's  
17 computer was not available for your inspection?

18 MS. THOMPSON: I am saying that when --

19 THE COURT: I mean, if there is a reference to the  
20 Vicky material in his report of what saw, are you saying you did  
21 not have access to the computer to look at it?

22 MS. THOMPSON: Yes, I had access to my client's --

23 THE COURT: Then I don't see what the problem is. I  
24 don't see what the purpose of this is.

25 MS. THOMPSON: He testified that my client -- and it's

1 an exhibit, searched on the word Masha, M-a-s-h-a. So it would  
2 be important to know, if you searched on the word Masha, what  
3 kind of words come up are. Is it only child pornography? Or to  
4 other images come up that one would not be put on notice that  
5 it's child pornography? I cannot go in and do the search on the  
6 word Masha, because if I were to bring up child pornography --

7 THE COURT: Yeah, but that's not the point about what  
8 you could do on another computer. The question is whether you  
9 could search his computer and see what the Sasha image revealed.

10 MS. THOMPSON: How can I cross examine him on the fact  
11 that Masha is a term for child pornography? I have no  
12 information about what Masha means, and my hands are tied. This  
13 was one of my objections initially in my motion in limine. He  
14 says Masha means child pornography. I have no way of testing  
15 whether or not his information is accurate or true. And he says  
16 PTHC is child pornography.

17 THE COURT: Did you ask the government to produce all  
18 of the films in his report as being found on the defendant's  
19 computer? Did you ask him just to produce them?

20 MS. THOMPSON: I have a copy of all of the films  
21 produced on my client's computer.

22 THE COURT: Do you have a basis, then, to challenge him  
23 on whether those involve child pornography or not?

24 MS. THOMPSON: I thought most of the videos on my  
25 client's computer were of adults.

1           THE COURT: well, but you can ask him if -- I don't see  
2 why you can't ask him what it is on this particular film that he  
3 justifies for his conclusion that it's child pornography.

4           MS. THOMPSON: I want to specifically ask him about the  
5 phrase Masha, and how did he come up with the idea that Masha is  
6 a phrase used for child pornography.

7           THE COURT: You can ask him that question.

8           MS. THOMPSON: But what I also want to establish in  
9 front of the jury is -- I can't cross examine him effectively  
10 about whether he is right or wrong about what Masha --

11          THE COURT: That's what I'm trying to get to. If he  
12 referred to this as a file name on the defendant's computers,  
13 did you ask the government to produce all of the files or the  
14 video for the file names that are on the defendant's computer?

15          MS. THOMPSON: There are no files named Masha on my  
16 client's computer. He pulled it out of search terms only.

17          THE COURT: well, if it's on search terms. Anything  
18 related to the -- that they contend is child pornography or  
19 evidence of child pornography, did they produce the film that  
20 reflects the basis for it? Did you ask for it?

21          MS. THOMPSON: I asked them specifically to do a search  
22 on the word Masha. I asked the government that, yes.

23          THE COURT: well, did you ask for any video or images  
24 that will reflect Masha or Sasha is -- constitutes child  
25 pornography?

1 MS. THOMPSON: I have asked for those things in the  
2 past, and I was told the Vicky series I asked -- I was told that  
3 that the government cannot show me child pornography images that  
4 were not specifically on my client's computer. So one of the  
5 things --

6 MS. DAUGHTREY: That's not what the government said,  
7 Your Honor.

8 THE COURT: Well, if you don't mind letting her finish.  
9 I will give you a chance to be heard. Really, I will.

10 MS. THOMPSON: So one of the things I want to attack is  
11 the government came up with search terms that were found from  
12 Limewire on my client's computer. The government doesn't say  
13 what they equaled. The government just said, he put in these  
14 search terms, and they are indicative of child pornography. And  
15 he testified that Desi -- Dee & Desi is a known term for child  
16 pornography series of videos and photographs. And so I -- they  
17 didn't testify that they found Dee & Desi on my client's  
18 computer. But the government has put into evidence that a  
19 search term for Dee & Desi is indicative of looking for child  
20 pornography.

21 Now, if I want to cross examine him about this and  
22 about what exactly comes up about Dee & Desi, I cannot do that  
23 effectively because I do not know what comes up when you do a  
24 Google search term for Dee & Desi. And therefore, I cannot  
25 cross examine him about, isn't he wrong? Isn't Dee & Desi also

1 the name of a soft drink or a radio song? Because if I were to  
2 type in Dee & Desi, I could be myself getting child pornography  
3 on my computer or my expert's computer, whoever is trying to  
4 type in this search word, and challenge the government's  
5 contention.

6 THE COURT: Well, that's why I was asking, did you ask  
7 the government for it? If they were going to rely upon it, did  
8 you ask the government to produce the underlying information  
9 that would establish these terms as child pornography? Did you  
10 ask for it?

11 MS. THOMPSON: I have asked at some point. I'm not  
12 sure how -- I have asked -- I think it was in another case that  
13 was very closely related.

14 THE COURT: Let's only deal with the case that's before  
15 me. Did you ask for it in this case?

16 MS. THOMPSON: I asked to see -- I put it in a pleading  
17 that I wasn't able to see it. That I didn't know what the Vicky  
18 series --

19 THE COURT: That's not my question. Did you ask for  
20 it?

21 MS. THOMPSON: I cannot specifically remember if I  
22 asked for it.

23 THE COURT: We'll take a recess, and you look through  
24 your papers and see if you made a request from the government  
25 for all -- for the data upon which they relied that references



1       these as child pornography.

2               MS. THOMPSON:   Yes.

3               (Recess.)

4               THE COURT:   You may be seated.

5               Yes, ma'am.

6               MS. THOMPSON:   Yes, sir.   Yes, Your Honor.   I made a  
7       specific request in writing in a pleading that I filed, Document  
8       Number 100, that was part of my motion in limine.   And it's  
9       Issue Number 9, or it's Paragraph Section 9.   And in this I  
10      objected to the government putting on testimony about a  
11      particular photograph or video series belongs to a -- or a  
12      particular photograph or video belongs to a series of child  
13      pornography such as the Vicky series or the Baby Jane series.

14              And I specifically asked that the government not be  
15      allowed to testify to the fact that a picture belongs to this  
16      series.   And then in the alternative, I stated that -- I asked  
17      to be allowed to review any other child pornography photographs  
18      that the government intends to reference during trial that are  
19      not in evidence in this case.   I had specifically asked that,  
20      Your Honor.

21              So the government has been allowed to testify that  
22      these photographs -- that this photograph -- it's called My Nine  
23      Year Old Cousin Sucks My Cock, something like that -- was part  
24      of the Vicky series.   I have not seen the Vicky series.   And I  
25      cannot cross examine him effectively on whether or not it really

1 is part of the Vicky series.

2 THE COURT: Well, the arrangement that was made when we  
3 discussed this motion was that they would provide you a computer  
4 that you could -- you and your expert could view, as you  
5 requested, shortly before or shortly after each of those  
6 proceedings, so it would give you an opportunity to view  
7 whatever films they were referring to.

8 MS. THOMPSON: I think that was to review the  
9 pornography that's alleged to be pornography on my client's  
10 computer, Your Honor. This Vicky series, these other pictures,  
11 were not on my client's computer.

12 THE COURT: No, you make reference to computer files it  
13 intends to offer into evidence at trial. And these are file  
14 names. Paragraph one of your motion. And that was the whole  
15 purpose of telling the government to make a computer available  
16 to you so you could do what it is we're discussing.

17 MS. THOMPSON: No, because even if they make that  
18 computer available to me, Your Honor, other photographs of this  
19 Vicky series are not on that computer. They are out there in  
20 the Internet, or they are on Scott Levasseur's one million  
21 images at his office. But they are not on my client's computer.

22 THE COURT: Okay. Bring the jury in, Mr. Marshal.

23 MS. DAUGHTREY: Your Honor, may I respond before the  
24 jury comes in?

25 THE COURT: Oh, yes, ma'am.

1 MS. DAUGHTREY: Thank you, Your Honor.

2 Your Honor, with regard to his identifying the vicky  
3 series, I thought we had dealt with that as part of the  
4 defendant's expert opinion.

5 THE COURT: No, ma'am. The problem is, he is making  
6 references -- giving testimony and giving conclusory references  
7 without a predicate for it. He is saying, based on my  
8 experience that this is a child porn website. Well, he provides  
9 us no basis for it, other than the fact that he has been working  
10 in this field.

11 MS. DAUGHTREY: Your Honor, think that's not correct.  
12 I think he testified that he learned about the fact that Dee &  
13 Desi and Masha were child pornography series in his training  
14 through ICAC and through other -- well, through ICAC.

15 THE COURT: The training materials aren't available.  
16 She has no basis to which to really meaningfully challenge that  
17 statement. And if the films themselves aren't available to  
18 provide a check on whether that's true or not, she is having  
19 difficulty challenging this witness's statements and  
20 characterization of these websites.

21 MS. DAUGHTREY: I understand that. But my  
22 understanding was that Detective Levasseur offered for her to  
23 come to his lab to do the searches that she wanted as well. And  
24 particularly, I think she was talking to me about Masha.

25 THE COURT: That is completely new. That's the first

1 time it has come up.

2 MS. DAUGHTREY: Well, it's an offer that was made  
3 before the trial began. That was my understanding.

4 MS. THOMPSON: I disagree with the characterization of  
5 that, Your Honor. I had specifically asked, and I was told no.  
6 I asked again on Monday afternoon. And so Mr. Levasseur never  
7 invited me to come to his shop. And I specifically was asking  
8 about these Masha photographs. And so I disagree that I was  
9 given any an opportunity to view that. It was kind of a  
10 run-around. He said ask Carrie. Carrie said, that's between me  
11 and Levasseur. Levasseur said he would talk to Carrie and see  
12 what she said.

13 THE WITNESS: I didn't say that.

14 THE COURT: Anything else?

15 MS. DAUGHTREY: No, Your Honor. The government can  
16 provide those images and can provide information from the  
17 National Center for Missing and Exploited Children that Masha  
18 and the Desi & Dee series are a known child pornography series.  
19 Detective Levasseur didn't testify to anything other than he  
20 knows that those terms are associated with that. He didn't  
21 testify that the defendant knew that, or that the defendant was  
22 using it for that purpose. Just that he is aware through his  
23 training and experience about that information.

24 And I would certainly be willing to take a recess and  
25 allow Ms. Thompson to see that information that NCMEC has about

1       that.

2               MS. THOMPSON: They put those search terms in to show  
3       intent of my client to look up child pornography. He didn't  
4       just say, I had training on this subject. He said, these terms,  
5       Google search on his computer, looking for child pornography, I  
6       know what that means.

7               THE COURT: You can bring the jury in.

8               (Jury in.)

9               THE COURT: Ladies and gentlemen of the jury, I really  
10      do hate to do this, but I'm going to have to declare a recess  
11      for today. An issue has arisen that the Court believes requires  
12      an extended period of time. And rather than having you all  
13      twiddling your thumbs in the jury room, I just think it's better  
14      to send you all home for the day. We were also concerned about  
15      this weather pattern that's supposed to be coming through a  
16      little bit later today and whether that posed any personal  
17      safety issue for any members of the jury as well as others.

18              So I'm going to send you home for the day, ask you to  
19      come back at 9:00 in the morning, and we'll try and get started  
20      promptly.

21              Once again, please do not discuss the case with anyone  
22      else, including your fellow jurors, family or friends, until you  
23      receive all of the evidence, the argument of counsel and the  
24      charge of the Court. Please do not conduct any electronic  
25      research of any kind concerning any of the issues or matters or

1 persons involved in this lawsuit.

2 If you will hand your exhibits to the Marshal, he will  
3 take custody of them until you return. If you will come back at  
4 9:00 in the morning. Thank you.

5 (Jury out.)

6 THE COURT: All right. I'm going to require the  
7 government to produce any file requested by the defense, file  
8 name, search name, that was -- that this witness testified and  
9 that the defense wants to see, any supporting underlying data of  
10 whatever sort, to support the characterization of those sites or  
11 those words as child pornography files. And they will be made  
12 available to the defense counsel and the defense counsel's  
13 expert. And they are to be made available immediately.

14 we're in recess until nine in the morning.

15 (Recess.)

16 THE COURT: Before we get started, there is no court  
17 reporter present, but I have my recording system from my days as  
18 a magistrate judge. And given that this is a conference and not  
19 proof, we will proceed on that basis unless there is an  
20 objection. The court reporter can make a transcript from this  
21 on the request of any party. Without objection.

22 MS. THOMPSON: I think, Your Honor, I do not believe  
23 that the government is going to be able to give me what I have  
24 requested, because it was my understanding from the way that  
25 Mr. Levasseur spoke that when he said he had had training on the

1 vicky series, I understood that to mean that he had already seen  
2 a series of photographs at one of his trainings or conferences.  
3 Somewhere it had been laid out in front of him a lot of  
4 photographs or videos and said this is part of the vicky series.

5 I think what IT turns out to be, that if he at sometime  
6 in his work has run across a photograph, he sends a hash value  
7 in, it comes back and says, that picture has been identified as  
8 one of the vicky series. But he is sending that on a hit or  
9 miss basis, just as he gets feedback over time. He has never  
10 seen the entire series.

11 And also, he doesn't have with him the ability to pull  
12 these pictures up by a known name. So even though may have a  
13 million child pornography photographs or I'm paths, videos in  
14 his lab, they have been stripped of all their names that they  
15 came with. And so he can't go in there and do a search for  
16 these videos by name.

17 And the NCMEC database that is head of all this, and  
18 really categorizes everything, never sends out videos. So at  
19 this point I could -- I'm not going to be able to look at these  
20 pictures, the Dee & Desi and the Masha pictures. They might be  
21 able to find for me one or two examples, but it's my  
22 understanding that these are coming from Scott Levasseur's  
23 memory. He doesn't keep any of his NCMEC reports, and he  
24 doesn't have names that he has filed. So it would have to be  
25 from his personal memory as to whether or not one of these

1 pictures fits in.

2 And at this point, Your Honor, I feel like this has  
3 really tainted the jury. He has testified that he had training  
4 in this area. Apparently when he goes to these ICAC training  
5 sessions, they never even show photographs. They just talked  
6 about numbers and techniques to get things off the computer. So  
7 he has been certified as an expert in child --

8 THE COURT: No, he wasn't. He was permitted to testify  
9 as a person with specialized knowledge.

10 MS. THOMPSON: Okay. Okay. But apparently he  
11 hasn't --

12 THE COURT: Daubert does not literally apply to  
13 specialized knowledge as it does to expert testimony.

14 MS. THOMPSON: Okay. I object to what has already been  
15 said to the jury now, Your Honor, because I think that it has  
16 tainted the jury. And I think he gave the impression that he  
17 had seen these pictures and was familiar with this whole series.  
18 He also testified about Masha and Dee & Desi. And the --  
19 something he said was Russian, Lolita something.

20 Your Honor, at this point I'm asking for a mistrial  
21 with prejudice.

22 MS. DAUGHTREY: Your Honor, the specialized knowledge  
23 that Detective Levasseur has is based on his -- both his  
24 training and his experience. I think all of this information  
25 that Ms. Thompson is talking about is perfectly appropriate for



1 cross examination. But we sat and we tried to --

2 THE COURT: Is there any dispute to her  
3 characterization that he has actually never seen any of the  
4 videos associated with these files and search terms?

5 MS. DAUGHTREY: There is absolutely no truth to that.  
6 what he can get -- I can have him get on the stand and explain  
7 to Your Honor. What happens in these cases is that when he's  
8 doing these undercover examinations, what he will do is he will  
9 run across these very long file names. And one of them, for  
10 example, might have the name Masha in it. And he sees a  
11 particular person in that file. And then as he continues with  
12 his investigations. He sees Masha coming up again and again.  
13 And he sees that that's the same person that was in the other  
14 file. And it becomes -- it's something that it's not like an  
15 official series name, but it's what everybody begins to know  
16 this particular person as in both the files, both the people who  
17 are downloading them for law enforcement purposes and for nonlaw  
18 enforcement purposes.

19 This is all sort of over time in his experience. And  
20 he has seen images of these different individuals. What he  
21 doesn't have is a database that says, this is the Masha series,  
22 and these are the images that are related to it. Because how  
23 this works is he goes out and he gets a computer that has  
24 suspected child pornography on it. And he sends the hash values  
25 of all these images up to an organization known as NCMEC, which

1 is the National Center for Missing and Exploited Children. They  
2 are the ones who have a centralized database. And their  
3 database consists of -- these are all the hash values of  
4 potential child pornography or known child pornography that we  
5 know of. These over here in this corner have been identified as  
6 including the child Masha in it.

7 And if Scott Levasseur sends up a hash value that's  
8 equivalent to one of those, then NCMEC is going to send him  
9 information and say, this is from a series known as Masha, this  
10 is the investigator that did this case, here's his contact  
11 information.

12 And so he has over time both seen it through his  
13 investigations but also gotten these reports back from NCMEC  
14 that say, yes, this is a child known as being associated with  
15 this Masha series.

16 So the problem is, they don't -- they can't -- they  
17 don't save their files. They only save the hash values. What  
18 they do have that Scott Levasseur didn't rely on but that I am  
19 working on trying to get right now, is they have information  
20 about each of the series that they know about. So, for example,  
21 they will have -- they will have some information up there that  
22 I can -- that I am working trying to get for Ms. Thompson that  
23 says there is a known series by the name of Masha, and here's  
24 what this series looks like. And they will give you a written  
25 description of that series, along with who the investigator is.

1           So that's probably the best database that we can give  
2       to her in terms of files that she wants. We have also offered  
3       that she and her expert can go to Scott Levasseur's lab and do  
4       whatever research that they want to do on that computer. The  
5       problem is, it depends on what day you are doing the research on  
6       what you are going to find. If you are doing research on Masha,  
7       you may find a child pornography file that is of Masha or isn't  
8       of Masha. The only way to tell if it is, is to send that file  
9       up to NCMEC, ask them if it's the same hash value as something  
10      they have connected with that series, and that takes time to do.

11           So that's the reason why there is not really any  
12      information that can be directly provided. It's not like Scott  
13      Levasseur has, you know, a very organized database that says,  
14      you know, this is the Masha series. This is something that he  
15      has learned over time in his experience both doing the work and  
16      talk talking to other law enforcement and understanding from  
17      training how this kind of thing works.

18           I would respectfully suggest that a mistrial is totally  
19      inappropriate. She can certainly cross examine him on this  
20      information, where he got his specialized knowledge, ask him if  
21      he has seen every single series picture that's there, that kind  
22      of thing. And I'm happy to provide the NCMEC information today  
23      if I can find it and to allow them to do whatever search they  
24      want to on his computer.

25           I don't think -- and I think even Ms. Thompson's expert

1 has admitted that doing that is probably not going to be very  
2 beneficial. What Jennifer wants -- what Ms. Thompson wants is  
3 something that's just really not available out there.

4 MS. THOMPSON: So as I understand things, not even the  
5 NCMEC database has images in it. And so in terms of knowing  
6 what is out there, nobody can get me any images of any of these  
7 series of child pornography that have been referred to. All  
8 they have is some numbers hash values that sometimes match  
9 pictures.

10 But I do believe that it's accurate to say that  
11 Levasseur, Mr. Levasseur, has not sat and seen a series or been  
12 presented with pictures and been told then that these match  
13 NCMEC. Or sorry, and that this is what the Vicky series is.

14 As the government even said, it just happens to be  
15 when he sees a picture with the name Masha, and then he begins  
16 to refer to it as the Masha series. Well, the picture he  
17 identified as being the Vicky series in this didn't even have  
18 the name Vicky in it. It was something about my nine year old  
19 cousin.

20 But there is no misunderstanding that when he testified  
21 about these series that he gave the distinct impression that  
22 through his training and his information, he had known what  
23 these series are. And now it's really just a lot more about  
24 kind of over time assuming that these names go with these  
25 pictures and we know that they have come back with hits.

1 I specifically asked the government for the NCMEC  
2 information that goes with the photographs in this case, and I  
3 was told that they don't ever give out NCMEC information. But  
4 now I question whether or not this picture actually -- the  
5 picture that they have identified as the Vicky series thumbnail  
6 ever actually came back from the NCMEC with a matched hash  
7 value.

8 Your Honor, we cannot undo this with the jury.  
9 These jurors do not like being in a child pornography trial.  
10 They are -- everybody's quick to think that is a bad thing.  
11 They have a much harsher judgment than they would on a different  
12 type of case or drug case. The government cannot undo this now  
13 by just simply letting me cross examine him. They need to say  
14 that what he said before was inaccurate and gave the wrong  
15 impression. I'm asking for a mistrial with prejudice.

16 MS. DAUGHTREY: Your Honor, there was not a NCMEC  
17 report in this case. Ms. Thompson asked for the contact  
18 information of the investigator that we have coming to testify  
19 in the Vicky series. We provided that information to her. He  
20 is here. And that information was provided to her.

21 with regard to -- we can go back and look, but I don't  
22 think that Detective Levasseur said, I know these search terms  
23 are child pornography or that this particular name Masha is a  
24 known child pornography series because I learned it from an ICAC  
25 training. We can go back and look at the --

1 THE COURT: Yeah, but I mean that was the whole  
2 predicate to allow him to even give that testimony.

3 MS. DAUGHTREY: Well, I think the predicate for it was  
4 both his experience and his training. I think that's the  
5 predicate for it. He has specialized knowledge.

6 THE COURT: The last description you have you gave me  
7 is that he talked to other people who say, yes, this is a sex  
8 file. So that's not training or really experience. That's just  
9 what somebody else told him.

10 MS. DAUGHTREY: Well, these are other law enforcement  
11 officers that discuss it as part of his experience, Your Honor.  
12 People begin to recognize the same person over and over and over  
13 again. And that's how we identified this particular Vicky  
14 thumbnail. Went up to NCMEC and they didn't hit on it. But he  
15 recognized the girl in there as being Vicky. Just like he's  
16 doing this over the course of time and begins to recognize the  
17 same images and or the same videos or the same child that's in  
18 here.

19 All of this is something that's subject to cross  
20 examination. There has been no misleading of the jury at this  
21 point. We certainly haven't gotten into the kind of detail that  
22 they were talking about here about how he knows it with the  
23 jury, and I think that's perfectly legitimate cross examination.  
24 There is no misleading that has happened in this case.  
25 Anything Ms. Thompson wants to ask him on cross examination,

1       that's the whole purpose of cross examination is to get into  
2       those details that she wants to get into.

3               THE COURT:   Well, Daubert doesn't apply -- it's not --  
4       Daubert does not apply in toto or literally to specialized  
5       knowledge testimony. That does not mean that Daubert's factors  
6       are not to be considered on specialized knowledge testimony.  
7       And the linchpin of both the Supreme Court cases is indicia of  
8       trustworthiness. And the experience and the opinions can be  
9       subject to some level of scrutiny to test the reliability of the  
10      opinions expressed.

11             I'll tell you what. I will ask counsel to put him on  
12      to testify on the actual predicate bases for his expressions --  
13      for his opinions that several of the file names and several of  
14      the search terms that he described as child pornography are, in  
15      fact, are the basis for those opinions.

16             MS. DAUGHTREY: Thank you, Your Honor.

17             Before we get started, I don't really mean to sound  
18      preachy, and I don't like to, but that was the purpose -- what  
19      we're doing now was the purpose of the earlier out of court  
20      hearing, to allow defense counsel an opportunity to voir dire on  
21      the witness's qualifications as either an expert or a person  
22      with specialized knowledge. But given the fact that there are  
23      subsequent representations about what is -- what information, in  
24      fact, is available or was made available and what the training  
25      of the witness actually is, and the bases for the witness's

1 opinion testimony, what those bases are, the Court decided to  
2 hold this hearing on whether the witness's opinions have an  
3 adequate basis as measures or measures of reliability to be  
4 admitted. So I will allow you to recall the witness and do your  
5 voir dire.

6 MS. THOMPSON: Yes, Your Honor.

7 THE COURT: If the witness will come around. You are  
8 still under the oath you have been administered.

9 EXAMINATION

10 BY MS. THOMPSON:

11 Q. So I'd like to go back again to your training  
12 that you had in terms of child pornography and the  
13 identification of child pornography. Let me ask you again, we  
14 have referred to a curriculum vitae that you prepared in  
15 preparation for today's testimony. And in that you had listed  
16 your training that you have in this area. So in -- can you give  
17 me a general overview of the type of training you have had in  
18 identifying child pornography?

19 A. I had no training in identifying child  
20 pornography.

21 Q. Okay. So when you use the -- there's two  
22 different databases, I believe, that you have been referring to.  
23 One was the NCMEC database; is that correct?

24 A. One is the what, ma'am?

25 Q. NCMEC database.



1 THE COURT: Can you spell out the acronym for the court  
2 reporter?

3 BY MS. THOMPSON:

4 Q. It stands for the National Center for Missing  
5 and Exploited Children; is that correct?

6 A. I refer to that, yes.

7 Q. Okay. And in this database, it is correct that  
8 they keep hash numbers?

9 A. Hash values.

10 Q. Hash values. And these are a number or a value  
11 that has been given to individual pictures; is that correct?

12 A. Correct.

13 Q. Now, when we were talking outside the courtroom,  
14 you said that the NCMEC database never sends you photographs or  
15 videos in response to a request. Is that right?

16 A. Correct.

17 Q. So what happens is you send in a photograph, or  
18 a number, a hash value, off of one of these pictures to NCMEC,  
19 and it returns a result to you; is that correct?

20 A. No, ma'am. I actually send the actual file, be  
21 it an image or a video file, to NCMEC. And then they return  
22 back to me with any known hits.

23 Q. I thought you said earlier when we were talking  
24 that you just send them a hash value?

25 A. I didn't say that. Somebody else in the circle

1       said that. I didn't.

2               Q.       So you send them a digital file?

3               A.       I send them either CDs or DVDs with the files on  
4       them. Or if there's a whole lot of them, you can send an  
5       external hard drive to them.

6               Q.       Okay. And then they send you back a report; is  
7       that right?

8               A.       Correct.

9               Q.       Okay. And then there is another way that your  
10       -- there is another database you are using, and that's the ICAC  
11       database; is that correct?

12              A.       For what purpose, ma'am?

13              Q.       Suspected child pornography files?

14              A.       No, ma'am. I don't have access to that  
15       database. The software that I use in peer-to-peer  
16       investigations has access to that database, but it doesn't  
17       present us with files.

18              Q.       Okay. So can we go back through your training,  
19       then, as to your training that you have had in the child  
20       pornography area. You said you have had no training on  
21       identifying pictures of child pornography?

22              A.       The only training that I have had through ICAC  
23       that pertains to child pornography is peer-to-peer  
24       investigations.

25              Q.       So they told you how to use software to contact

1 other people and download files; is that right?

2 A. They taught you everything that you needed to  
3 know about the networks, how the networks work, the software  
4 that you are going to use, how to operate the software. They  
5 instruct you with how to make a case, how to work your case, how  
6 to make your case all the way through to the prosecution. They  
7 instruct you with key words to use to search for child  
8 pornography.

9 And then you actually in the classroom get on, using  
10 your software, connect to the Gnutella network, and make  
11 downloads from other people out in the world on the network as  
12 part of your training.

13 Q. Okay. And so in those cases, then, you are  
14 simply working with software, and they have trained you on  
15 connecting to other people that are out in the Internet cloud;  
16 is that right?

17 A. On the Gnutella network; yes, ma'am.

18 Q. So in this period of peer-to-peer training, they  
19 would have explained to you what a torrent is and how a bit  
20 torrent works?

21 A. That would be a particular class. Bit torrent  
22 class is a totally separate training from Gnutella training, the  
23 same way that Aries network, Aries training. It's peer-to-peer.  
24 And Bit Torrent is peer-to-peer, but it's totally separate  
25 training.

1           Q.       But when I was referring to torrent, I was  
2       referring to the word that means how this data is transferred  
3       from peer-to-peer network station, not a particular software.  
4       It's transferred in torrents; isn't that correct? Blocks of  
5       data that are sent from one computer to the other?

6           A.       No, ma'am. Not on the Gnutella network.

7           Q.       Okay.

8           THE COURT: Let me see if I understand your  
9       explanation. Your training, then, is really just on how to  
10      search computers that may contain child pornography, and also  
11      training on how information is shared on that computer with  
12      other computers.

13          THE WITNESS: How to locate people that are  
14      trafficking, and then how to receive the child pornography files  
15      from them and build your case. As far as child pornography, I  
16      have had no specific training where they showed you pictures.

17          THE COURT: So you have not received any training on  
18      identifying images that you capture as to whether they are  
19      children or not?

20          THE WITNESS: No, sir.

21          THE COURT: Have you received any training on -- by  
22      experience -- how extensive has been your experience in  
23      identifying whether an image that you may see is associated with  
24      a file that has been determined to be child pornography?

25          THE WITNESS: In my years of doing this, every time

1       that I do a forensic exam on a computer, when I collect the  
2       child pornography files, I send them to NCMEC. And NCMEC  
3       returns a report with a series name and then the hash values  
4       related to the files that I sent them of known children,  
5       children that have been identified as actual victims, and --

6               THE COURT: Yeah, but you don't do the determination of  
7       the hash value?

8               THE WITNESS: The hash value is irrelevant, really.  
9       It's just something for them --

10              THE COURT: That wasn't my question. My question was,  
11       do you determine the hash value of an image?

12              THE WITNESS: There's a hash value to every file; yes,  
13       sir.

14              THE COURT: I got that part. But your training doesn't  
15       involve you making that -- assigning that value, does it?

16              THE WITNESS: No, sir.

17              THE COURT: Somebody else does that. And then they  
18       tell you whether it's a match or not?

19              THE WITNESS: Correct.

20              THE COURT: And a match is only based on hash value?

21              THE WITNESS: It only matches a known hash value; yes,  
22       sir.

23              THE COURT: All right. Any further questions?

24       BY MS. THOMPSON:

25              Q.       Yes, sir. When you are talking about matching

1 hash values, there were no NCMEC hash values matched in this  
2 case; is that correct?

3 A. Correct.

4 Q. And so when you are talking about even detecting  
5 suspected child pornography, you are using a database that  
6 individual law enforcement officers have made for themselves; is  
7 that correct?

8 A. In the ICAC.

9 Q. ICAC is like a group of people that are all  
10 members of this ICAC organization; is that right?

11 A. Task force; yes, ma'am.

12 Q. So when you, yourself, run across a picture that  
13 you think looks like child pornography, you will upload it to  
14 your personal ICAC database; is that right?

15 A. It's not an ICAC database.

16 Q. It's your personal child pornography database?

17 THE COURT: Well, let him explain what it is. That  
18 helps me. What is it? What is the ICAC base? What is it?

19 THE WITNESS: The ICAC -- the only law enforcement  
20 officers authorized to do child pornography investigations are  
21 members of the ICAC Task Force. And you have to be licensed  
22 through ICAC in order to operate and use this software for child  
23 pornography. They have a server. ICAC has a server. And at  
24 this time the server was based in Wyoming with the law  
25 enforcement in Wyoming. And they had all of the Shaw values of

1 all of the known child pornography values out there. Images or  
2 videos of children that had been identified. And they were  
3 called known files. And then they had a list of suspected child  
4 pornography files. Children who were, in our terms, were  
5 obviously children, but they were not identified. Nobody knew  
6 who they were.

7 So they kept that database. So when we would do  
8 investigations, we would automatically load that server, that  
9 computer server in Wyoming, with data of IP addresses, computers  
10 that were trafficking in known or suspected child pornography  
11 files.

12 So when we say the database, it's actually just a big  
13 server that belongs to the Wyoming ICAC.

14 THE COURT: So what comes off of that server is either  
15 a file that is suspect or a file that has a Shaw value?

16 THE WITNESS: All of the files have Shaw values, but  
17 they are identified as either known or suspected.

18 THE COURT: So the Shaw value doesn't provide you any  
19 basis to determine whether it is child pornography or not?

20 THE WITNESS: That's the thing. They have the Shaw  
21 value, and they say that this Shaw value is child pornography.  
22 In my lab, I have a database that has all of the child  
23 pornography files that I dealt with that has the Shaw values. I  
24 can look at the ICAC's Shaw value, go into my database and pull  
25 up that Shaw value, look at the file, and know that the Shaw

1 values are the same, so it's the same file that they have, and I  
2 have it here. And that's to prevent from having to transport.

3 THE COURT: Yes, but some of the files -- if they all  
4 have Shaw value, some files have Shaw value that are only  
5 suspects; right?

6 THE WITNESS: That are not known -- that are not  
7 identified children; correct.

8 THE COURT: They don't know whether they are children  
9 or not, but they have a Shaw value?

10 THE WITNESS: Correct.

11 THE COURT: So just because you have something with a  
12 Shaw value, and Wyoming has a Shaw value, that does not  
13 establish that the people -- that the images are children?

14 THE WITNESS: That's why as an investigator working  
15 these crimes, you have to view the file and make your  
16 determination on if it fits as being a child.

17 THE COURT: Okay. Now, what is your -- I thought you  
18 said earlier you did not have any training in determining  
19 whether the image on the picture on the image was a child or  
20 not.

21 THE WITNESS: There is no classroom training on  
22 identifying child pornography. The only training that I have is  
23 my daily work experience from viewing these files. It's -- when  
24 you look at a prepubescent child, it's obviously a child. So  
25 even though it's not known, the victim is not known, as a human,



1       you know --

2               THE COURT:  well, why would there be unknown files in  
3       there, suspect files?

4               THE WITNESS:  Because a lot of child pornography comes  
5       from different countries.  And these cases were never worked,  
6       the children were never identified, so we don't know who they  
7       are.  And that's why we submit -- like, I could make a child  
8       pornography file -- movie file today.  Let's just say I went  
9       home and I filmed my daughter doing sexual activity and loaded  
10      it on the Limewire and shared it.  Then the police did a search  
11      warrant, got the guy's computer, and looked at the file, and  
12      it's an obvious child.  well, it's not known.  It's in no  
13      database anywhere, because nobody has come across it before, and  
14      the child is not identified.

15      BY MS. THOMPSON:

16              Q.       So these pictures are not subject to peer  
17      review; is that right?  If you look at something --

18              A.       Yes, ma'am.  When you submit -- when -- if I  
19      submit them to the ICAC server --

20              Q.       Yes.

21              A.       -- they look through them and make their  
22      determination whether they want to add them on.  But again,  
23      that's their opinion.

24              Q.       okay.  But if they decide if they want to --  
25      when you say they, who is they?

1           A.       People who work in that department.

2           Q.       So it could be one person or multiple people?  
3       You don't know?

4           A.       Correct.

5           Q.       And so when this mysterious "they" entity  
6       reviews it, nobody goes back behind the "they" entity and makes  
7       sure they didn't make a mistake, do they?

8           A.       That's why you are trained in the training --

9           THE COURT: Answer the question first. Restate your  
10       question.

11       BY MS. THOMPSON:

12           Q.       Nobody goes behind the "they" entity --

13           A.       I don't know.

14           Q.       -- to double check?

15           THE COURT: Let already finish the question?

16           THE WITNESS: I just -- I don't know if somebody goes  
17       behind.

18           THE COURT: It would be helpful, sir, if you would  
19       allow her to finish the question, answer the question as asked.  
20       If there is any need to answer anything else, your lawyer can  
21       get up and ask a question, okay? So let's try it one more time.

22           Ask your question.

23       BY MS. THOMPSON:

24           Q.       So when the "they" entity adds a picture to this  
25       database, there is nobody that double checks to make sure they

1 -- that the "they" entity didn't make a mistake?

2 A. I don't know, ma'am.

3 Q. Okay. And so if it turns out that something got  
4 uploaded, and later it's discovered that it was uploaded in  
5 error, and later it's discovered that that file, in fact, is an  
6 adult, you don't know of any method to correct an error entry in  
7 the ICAC database?

8 A. Yes, ma'am. If I discover a file that I don't  
9 think is a child on the -- that they are listing, I have a  
10 method to contact the ICAC administrators up there and say,  
11 review this file.

12 Q. Okay. So but this is just based on your  
13 personal opinion. And you would contact them and say, I don't  
14 think this is a child?

15 A. Correct.

16 Q. And you don't know what method they use to  
17 determine whether they are going to remove the picture from the  
18 collection or not?

19 A. I don't.

20 Q. And so your opinion -- you have developed your  
21 knowledge of child pornography simply by experience of just  
22 looking at a lot of photographs over time?

23 A. Correct.

24 Q. Okay. But with no feedback as to whether you  
25 are making correct decisions or incorrect decisions?

1           A.       I don't guess so.

2           THE COURT: Have you had any training on distinguishing  
3 whether there has been any digital manipulation of an image?

4           THE WITNESS: I have not, sir.

5           MS. THOMPSON: No further questions.

6           THE COURT: Any further questions of this witness?

7 EXAMINATION

8 BY MS. DAUGHTREY:)))

9           Q.       Detective Levasseur, how is a hash value created  
10 from a file?

11          A.       It's an algorithm that's run against the file.  
12 And it -- I mean, --

13          Q.       Is it something that somebody -- a person does?  
14 Or is it an automatic type of thing?

15          A.       It's in the software. Like --

16          THE COURT: Did your computer training allow you to  
17 determine the hash value of an image?

18          THE WITNESS: Through my --

19          THE COURT: Through your training.

20          THE WITNESS: Through my training?

21          THE COURT: Can you determine, independent of what some  
22 other places do, can you determine a hash value -- do you have  
23 the skill set to determine a hash value?

24          THE WITNESS: Yes, sir.

25 BY MS. DAUGHTREY:

1 Q. And when you are talking about known hash values  
2 and suspected hash values -- I'm not sure it's clear -- what is  
3 the difference between known -- what does known mean?

4 A. Known means that the child in the image has been  
5 identified and has been positively identified as being underage.

6 Q. Okay. How many of those kind of files have you  
7 seen in the course of your work doing this?

8 A. Thousands upon thousands.

9 Q. And the known child pornography or the known  
10 hash values, those are in both the database -- the ICAC database  
11 and NCMEC; is that correct?

12 A. Correct.

13 Q. Okay. So they are the same?

14 A. Correct.

15 Q. Okay. They may not have all of each one, but --

16 A. Correct.

17 Q. But they can be in either or both. The  
18 suspected child pornography -- is that something that you all  
19 use as a tool? Or are you expecting to use that in a court of  
20 law?

21 A. We use it as a tool. I will download suspected  
22 child pornography files to view them. And if they are  
23 obviously, to me, prepubescent children, I will include them as  
24 part for the case.

25 Q. All right. I want to take you back to something

1 we were talking about this morning that was of concern after the  
2 jury was dismissed. You testified just a few minutes ago that  
3 in your training to do peer-to-peer investigations, that you are  
4 instructed on key words that you use to search for child  
5 pornography.

6 A. Correct.

7 Q. I would like to ask to pull Exhibit 9, please,  
8 and ask that that be handed to the witness. In that Exhibit 9,  
9 from that list, what search terms did you learn in your ICAC  
10 training -- what search terms on that page did you learn or were  
11 told were key words to use to search for child pornography?

12 A. I specifically remember being taught to use  
13 Mafia Sex, Years, Dee & Desi, PTHC, pedo, LSM. I specifically  
14 remember those terms.

15 Q. What about Preteen?

16 A. Oh, I missed that one. Yes, Preteen.

17 Q. And what specifically were you told about those  
18 words when you were in your ICAC database training?

19 A. You have a good likelihood of returning child  
20 pornography hit results.

21 Q. Okay. Were you ever formally taught that these  
22 search terms were associated with a particular child or  
23 children?

24 A. No, ma'am.

25 Q. As part of your training, were you ever

1 instructed, this is a list of child pornography series names?

2 A. No, ma'am.

3 Q. Do you remember the first time that you heard  
4 the term Mafia Sex when you were trained on it?

5 A. Yes, ma'am.

6 Q. Had you ever heard that term before?

7 A. Had not.

8 Q. Did you know what it meant at that time?

9 A. Before seeing the file name, no, I didn't. But  
10 in the training, I learned what it --

11 Q. Okay. Did you ever use it as a search term  
12 looking for child pornography?

13 A. Numerous times.

14 Q. And what happened when you used it?

15 A. I would always get back some child pornography  
16 hits.

17 Q. Okay. Were they similar in nature ever, the  
18 hits that you got?

19 A. A lot of the files were of the same children in  
20 different movies or different images. But in the same respect,  
21 I would get files back that weren't the same children at all.  
22 Different altogether.

23 Q. Is that term, Mafia Sex, informally known by  
24 people who work these cases as being a series?

25 A. It is.

1 Q. what do you mean by series?

2 A. A series is just a bunch of different pictures  
3 or videos of the same child or children. And it's just a term  
4 we use to correlate them altogether as saying instead of a  
5 collection, the term just was being used in ICAC, a series. And  
6 it just means that the same victims are in these different  
7 videos and different images.

8 Q. we've talked about NCMEC. When you send your  
9 child pornography up to NCMEC, do you ever get information back  
10 from them that corresponds with the series in your  
11 investigations?

12 A. Sometimes I do.

13 Q. Give us an example.

14 A. For example, in the Vicky series I recall  
15 getting results back on that series.

16 Q. How many different series -- I mean, do you see  
17 one or two from NCMEC? Or do you see more than that?

18 A. I don't know how many series there are in the  
19 NCMEC database. There's a lot. But I'm pretty familiar with  
20 eight, ten series.

21 Q. Were you familiar with the Vicky series at the  
22 time that you investigated this case?

23 A. Yes, ma'am.

24 Q. And did you see an image on Mr. Tummins'  
25 computers that you believed to be from that series?



1 A. Yes, ma'am.

2 Q. And what did you do to verify that?

3 A. Because I see the child that's in that Vicky  
4 series in almost every examination that I do for child  
5 pornography. It's very widely traded. I knew that she was a  
6 known child, and I searched my records and found contact  
7 information for the agent that worked the case. And I called  
8 him and asked him if he would -- if I sent him a picture if he  
9 would identify it for me, if it was his victim that he worked  
10 from the Vicky series. And I sent it to him, and he responded  
11 back that he knew who she was.

12 Q. So you even in your investigation will go as far  
13 as to verify known children; is that correct?

14 A. Could you say that again, ma'am?

15 Q. In your investigations, you verify known  
16 children?

17 A. Yes.

18 MS. DAUGHTREY: Okay. I believe that's all I have.  
19 Thank you.

20 THE COURT: Did I understand you to testify earlier  
21 that when you get hash values, that there is no way to determine  
22 from the hash value whether it's suspect or a known? Is that  
23 right?

24 A. The ICAC is the ones that determines -- not  
25 ICAC, excuse me, NCMEC, National Center --- they determine --

1       they make the determination on if it's a known child or if it's  
2       a suspected child pornography. So when they send back their  
3       report, they are not going to send me the images. So instead of  
4       sending the images, they send the hash value.

5               THE COURT: I got that part. But is there anything in  
6       the hash value that you get back to reflects it's known or  
7       unknown?

8               THE WITNESS: No, sir. Not in the hash value.

9               THE COURT: Not in the hash value. Do you know what  
10      the hash value represents?

11              THE WITNESS: It's a digital fingerprint for that  
12      particular file.

13              THE COURT: Is it a result of the examination of the  
14      image?

15              THE WITNESS: Could you say that again, sir?

16              THE COURT: It is a result of the examination of the  
17      image?

18              THE WITNESS: It's just an algorithm that's run against  
19      the file. I make my own hash value when I do my computer  
20      forensic exam.

21              THE COURT: What are you measuring with the hash value?  
22      What is it that you are measuring?

23              THE WITNESS: The algorithm is gathering all the data  
24      within the file. And it's making a value for that file that's  
25      unique to that file. The numbers in that hash value, the

1 letters in that hash value, are totally random if look at them.  
2 They don't hold any information as to file name or what it is.  
3 It's just a value that's given to the file.

4 THE COURT: I got the part that it's a value. I  
5 understand that. What I'm asking you is, what is it that it's  
6 measuring to come up with an assigned value? What it is that  
7 they are measuring?

8 THE WITNESS: I don't know how the algorithm works.  
9 It's extremely complex. It's a mathematical algorithm that does  
10 it. And I'm not smart enough to tell you how it works.

11 THE COURT: Anything else?

12 MS. DAUGHTREY: Yes, I would like to ask one follow-up  
13 question.

14 BY MS. DAUGHTREY:

15 Q. So it's clear that the hash value itself doesn't  
16 tell you this is or isn't child pornography?

17 A. Correct.

18 Q. If you have a hash value for a file, how do you  
19 figure out whether or not it's known child pornography or  
20 suspected child pornography or something entirely different?

21 A. We're relying -- me as an investigator, I'm  
22 relying on NCMEC and ICAC databases that are saying that that  
23 hash value represents a child pornography file. So I download  
24 that file. But then I have to view that file and determine  
25 whether it is child pornography or not.

1           Q.       So are you comparing the hash value of the file  
2       that you have with the hash value of the file over here in the  
3       NCMEC database?

4           A.       Correct.

5           Q.       Is it possible for one file to have more than  
6       one hash value?

7           A.       No, ma'am.

8           Q.       Okay. If two files have the same hash value,  
9       does that show that they are --

10          A.       They are the same file.

11          Q.       -- they are the same file. Okay. Thank you.

12          MS. THOMPSON: I have some more questions, Your Honor.

13       FURTHER EXAMINATION

14       BY MS. THOMPSON:

15           Q.       So as I understand your testimony today, you are  
16       saying that when you went to these classes and they trained you  
17       on how to search for child pornography, and they gave you these  
18       search terms, that they trained you to use to type in, so that  
19       -- I think you said earlier so you could find child pornography.  
20       Is that what you said?

21          A.       Correct.

22          Q.       Okay. They told you search on the term Mafia  
23       sex; is that right?

24          A.       Correct.

25          Q.       But it's your testimony today that at this class

1 they never told you why?

2 A. I testified that they told me that it would  
3 return child pornography files.

4 Q. But they didn't give you any other background  
5 information except that Mafia Sex will give you child  
6 pornography?

7 A. Correct.

8 Q. And it's your testimony today that they never  
9 trained you that Mafia Sex was a well-known series of child  
10 pornography?

11 A. I've never had any training on a particular  
12 series or what images are in series. I've had discussions at  
13 trainings with other officers about different series. But as  
14 far as PowerPoint on this is this, this is that; no, ma'am.

15 Q. So when you had training with other officers  
16 about different series, no one pulled out pictures and said,  
17 these pictures represent this series?

18 A. No, ma'am.

19 Q. Okay. And so you testified before the jury that  
20 this Mafia Sex is a search term you put in, and that's a  
21 well-known series of child pornography?

22 A. Correct.

23 Q. But you didn't get that information from any of  
24 your training? Is that what you're saying? That to type --  
25 that's why you would type in that search term?

1           A.       Could you say that again?

2           Q.       You weren't -- your training didn't tell you,  
3 type in Mafia Sex because it's a search term that represents a  
4 well-known series of child pornography?

5           A.       No. The training taught us to type in Mafia Sex  
6 to get child pornography. And in my interaction with other ICAC  
7 officers, we know that Mafia Sex is a series.

8           Q.       But to be clear, you know what you think that  
9 series represents. And other people know what they think Mafia  
10 sex series represents. But you have never all gotten together  
11 to make sure you are talking the same series of pictures;  
12 correct?

13          A.       There has never -- no, ma'am. There has never  
14 been any training like that.

15          MS. THOMPSON: Okay. No further questions.

16          THE COURT: Of the files, of the search terms that you  
17 identified in your direct testimony, how many of those search  
18 terms have you previously confirmed as known child pornography  
19 -- as known children? Pornography involving known children?

20          THE WITNESS: The search terms that are in this report?

21          THE COURT: Uh-huh.

22          THE WITNESS: Every one of them that I just named off  
23 here off this paper, I've gotten known child pornography from  
24 those search terms.

25          THE COURT: Okay. But did I also understand you to say

1       that there are images in the Mafia series that do not contain  
2       child pornography?

3               THE WITNESS:   Could you say that again, sir?

4               THE COURT:   Did I understand you to testify that there  
5       are images in the Mafia series that are not known to contain  
6       child pornography?

7               THE WITNESS:   Correct, sir.   A search term --

8               THE COURT:   The fact that it's a Mafia search term  
9       doesn't automatically mean it's child pornography?

10              THE WITNESS:   Correct.

11              THE COURT:   Could be or could not be?

12              THE WITNESS:   It could be adult porn.   It just -- when  
13       you do the search term to get the files, you may get all kinds  
14       of different files, not necessarily all child porn.

15              THE COURT:   So in the earlier description of search  
16       terms, it wouldn't be accurate to say that every time you use  
17       those terms, you will get child pornography.   That's not  
18       accurate, is it?

19              THE WITNESS:   That would be an accurate term, because  
20       when you search for it, you're getting a whole list of files.

21              THE COURT:   Well, you are getting a list of files to  
22       investigate further, is what you're getting, isn't it?

23              THE WITNESS:   Correct.

24              THE COURT:   So, but until you investigate them, you  
25       don't know whether, in fact, they are adult or children?

1 THE WITNESS: Correct.

2 THE COURT: So the only certainty is, is that you've  
3 gotten something to pursue further?

4 THE WITNESS: To look at; correct.

5 THE COURT: To look at, as opposed to saying that that  
6 is, in fact, child pornography?

7 THE WITNESS: Correct.

8 THEH COURT: Now, on these file names that you  
9 identified as child pornography files, does the same explanation  
10 apply to those as well? That this is a file that you can search  
11 for child pornography, but it remains to be investigated  
12 whether, in fact, it is child pornography?

13 THE WITNESS: Correct.

14 THE COURT: So that really is your testimony as to the  
15 earlier files and search terms that you described?

16 THE WITNESS: Correct.

17 THE COURT: Anything further?

18 MS. DAUGHTREY: I do have one question.

19 FURTHER EXAMINATION

20 BY MS. DAUGHTREY:)))

21 Q. The hash values -- those are also used by the  
22 peer-to-peer?

23 A. Software; yes, ma'am.

24 Q. And in your forensic software?

25 A. Correct.



1           Q.       So this is something that's common that's done  
2 with these -- ?

3           A.       Yes, ma'am. Hash values are common throughout  
4 all computer stuff.

5           MS. DAUGHTREY: All right.

6           MS. THOMPSON: And I have one more question after that.

7 FURTHER EXAMINATION

8 BY MS. THOMPSON:)))

9           Q.       But the hash values are based on different  
10 number bases. Gnutella may use base 16. Somebody else uses  
11 base 32 or 64. So you can't necessarily compare one hash value  
12 to a whole another program that's in hash values?

13          A.       That is correct in some respect. Like the  
14 Limewire Gnutella network will use one standard of hashing,  
15 where like in my computer forensics, I use a different standard  
16 of hashing. They are both hash values. They are just different  
17 algorithms.

18          THE COURT: Anything further of this witness?

19          MS. DAUGHTREY: Not from the government, Your Honor.

20          THE COURT: You may step down, sir.

21          THE COURT: Any further argument, either side?

22          MS. DAUGHTREY: Your Honor, I think it's clear yet  
23 again that this detective has specialized knowledge in  
24 peer-to-peer investigations from his testimony about his  
25 training. He didn't testify -- if you look at the transcript,

1 and we were looking at it earlier, he didn't testify that those  
2 search terms in Exhibit 9 were automatically going to mean that  
3 this defendant possessed or received child pornography.

4 THE COURT: That was the distinct impression that his  
5 testimony left. That the file names and the search terms would  
6 yield child pornography. And that's something I think that --  
7 that is my distinct recollection of the whole focus of that  
8 testimony. Investigating child pornography is what he has just  
9 said, not that they are known producers of child pornography.

10 And since the Supreme Court's decision in Ashcroft v.  
11 Free Speech Coalition, 535 U.S. 234 (2002), the Court held  
12 unconstitutional subparagraph (b) of 2286(8) that deemed to be  
13 contraband an image appears to be of a minor engaging in  
14 sexually explicit conduct as unconstitutional.

15 So it seems to me that the reliability factor has to --  
16 has to increase. And what was presented earlier as expertise is  
17 now striking the Court as really just investigative techniques.  
18 Here's how you go about identifying leads to determine whether  
19 something is, in fact, child pornography.

20 MS. DAUGHTREY: well, but he's not being charged with  
21 violation of the law for having those search terms. what he's  
22 charged with is violation of the law for having child  
23 pornography.

24 THE COURT: Yes, but the testimony of this witness --  
25 my distinct recollection of it was to show that if these search

1 terms are found on your computer, then there is possession of  
2 child pornography, you are in possession of child pornography.  
3 whereas what he really is saying is that this will lead me  
4 further to examine whether there is child pornography. And to  
5 me, that is a quantitative difference.

6 Anything further?

7 MS. DAUGHTREY: Your Honor, I would submit that, you  
8 know, the government has to prove intent. And one of the things  
9 in his experience of doing this is that he uses these terms to  
10 find child pornography. And I think that that's an important --

11 THE COURT: I don't think there is any problem with  
12 that. There is no problem with that. I mean, that's legitimate  
13 technique. But it was posed to the witness that, by virtue of  
14 him finding these terms, that there is child pornography on the  
15 defendant's computers. That's how it was cast to the jury.

16 MS. DAUGHTREY: well, the point that the government --  
17 the reason that the government brought that in was to show that  
18 he did have an intent to do that, Your Honor. I'm not sure that  
19 the testimony --

20 THE COURT: If you say he has the intent by virtue of  
21 the existence of the search terms or the names, then you really  
22 don't know that until you first determine whether what's there  
23 is actually child pornography or not. If it's not child  
24 pornography, then those terms are meaningless.

25 MS. DAUGHTREY: well, but the other government's other

1 proof shows that there was child pornography on it. We're not  
2 completely done with our proof at this point.

3 THE COURT: I don't know what the other proof is. The  
4 question I have before me is the reliability of the opinion  
5 testimony that this witness gave on direct examination that  
6 these search terms and these file names reflect that he had  
7 child pornography on his computer.

8 MS. DAUGHTREY: Your Honor, I don't think that's what  
9 he testified to. And I would like to be able to look at the  
10 transcript to verify that. I think what he testified to was  
11 these are known child pornography search terms.

12 THE COURT: That was the whole point that you were  
13 saying. These terms are shown to show his intent. So that had  
14 to be the purpose of the witness's testimony, was to say that he  
15 intended to possess these because these file names and these  
16 search terms were on his computer. I mean, that's what you just  
17 said. You had to prove intent. And these search terms are to  
18 show intent. So that had to be the purpose of his testimony,  
19 was to establish that the existence of these search terms and  
20 the existence of these file names means he intended to have  
21 child pornography.

22 MS. DAUGHTREY: And I think the government is entitled  
23 to show the jury what file names were there and what search  
24 terms he used.

25 THE COURT: Well, that's showing the factual

1 background. But that's not how you posed this witness. You  
2 posed this witness as an expert on child pornography.

3 MS. DAUGHTREY: I think he was posed as an expert in  
4 peer-to-peer investigations, is what we came down to in the end.

5 THE COURT: Well, peer-to-peer investigations is how  
6 computers operate to share information.

7 MS. DAUGHTREY: Right.

8 THE COURT: But you were asking his opinions on, does  
9 that show -- what does that site reveal? That site reveals  
10 child pornography. And it may on some occasions, and it may not  
11 on others.

12 MS. DAUGHTREY: Your Honor, we didn't talk about any  
13 sites or any -- I would like to go back and look at the  
14 transcript, if possible, because I don't think he testified that  
15 it meant that he had child pornography on his computer. I don't  
16 think that -- the testimony was that he was intending to look  
17 for child pornography. But that's different than saying that he  
18 is guilty of it. I think it's just one part of the proof, that  
19 those search terms -- and I think that's what he testified.  
20 Those search terms are known terms for child pornography.

21 THE COURT: Anything else?

22 MS. DAUGHTREY: No, Your Honor.

23 THE COURT: For the defense? Anything else?

24 MS. THOMPSON: No, Your Honor.

25 THE COURT: We're in recess.

1 (Recess.)

2 THE COURT: I think the best approach to this is to get  
3 a record of the actual testimony. I'm advised by the court  
4 reporter that this will be a rough draft. If are there any  
5 particular areas of contention, she can get a certified portion  
6 of that. I do think that it would be helpful to the Court to  
7 reexamine the testimony before taking any other matters or  
8 acting on the defendant's motion.

9 Any other matters? I understand that the court  
10 reporter can provide a complete rough draft within about 15  
11 minutes.

12 (Conclusion of proceedings of 2/25/15.)

13 \* \* \* \* \*

## REPORTER'S CERTIFICATE

I, Peggy G. Turner, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on February 25, 2015, in the matter of USA v. JEREMY SETH TUMMINS, Case No. 3:10-00009; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript, Pages 1 through 85, is a true and accurate record of said proceedings.

This the 9th day of April, 2015.

Peggy G. Turner  
S/Peggy G. Turner, RPR  
Official Court Reporter